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Legal Trends and Caveats on the Relevancy of Past Performance

An Additional Help for ADS Chapter 302

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In recent years, GAO has considered and sustained challenges to agencies' evaluation of contractor performance information that was not relevant to the RFP at issue.

- Si Nor, Inc., B-292748.2, 2004 CPD ¶10, the GAO held that the awarding agency erred in considering relevant one of the awardee's prior contracts. The RFP stated that only information on contracts "similar in size, scope, and complexity" to the work to be awarded would be evaluated. GAO found that the contract at issue was "substantially less than the dollar value of the requirements of the RFP" and relevant only to a limited portion of the solicited work.
- Continental RPVs, B-292768, 2004 CPD ¶56, the GAO found unreasonable the agency's past performance evaluation of the awardee because it was based upon prior contracts which were not similar to several of the essential RFP work requirements and the dollar value of the largest contract was less than three percent of the contract value contemplated under the RFP, when the solicitation required the submission of information on contracts that were "same or similar" to the effort required by the RFP.
- KMR, LLC, B-292860, 2003 CPD ¶233, the GAO held that where the RFP called for "same or similar" contracts, "a firm's success in performing complex IT tasks does not necessarily indicate that it can successfully perform the contract here involving significantly different tasks and skills, even if they involve less sophisticated skills."

Contract Review Board Findings on Past Performance:

The CRB has been requesting technical evaluation committees to revise memoranda to detail precisely what past performance was checked. Gone are the days when TECs can summarily conclude that past performance was "good" without explaining the bases for their conclusions.